

3/15/2007

11-R-07

A RESOLUTION

**Authorizing the City Manager to Sign
the Playskool "Win a Boundless Playground" Contest Agreement**

WHEREAS, the City of Evanston wishes to reconstruct an existing playground and surrounding park at Lawson Park; and

WHEREAS, the family of Noah Cutter proposes naming the reconstructed playground "Noah's Playground for Everyone" in memory of Noah Cutter, a young disabled child who died in 2005; and

WHEREAS, in addition to accepting private donations, Noah's family is applying for grants to support the playground reconstruction; and

WHEREAS, one of the grant applications submitted by Julie Cutter in November 2006 is an essay contest entitled "Win a Boundless Playground" submitted to Playskool worth approximately three hundred thousand dollars (\$300,000.00) retail value; and

WHEREAS, the "Noah's Playground for Everyone" essay is among twenty finalists out of nine hundred entries; and

WHEREAS, it is required that Playskool contest finalists sign the *Playskool "Win a Boundless™ Playground" Essay Contest Agreement* attached hereto as Exhibit 1 and incorporated herein by reference; and

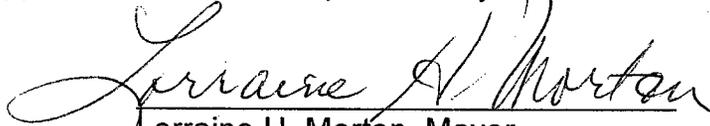
WHEREAS, the City Council believes it is in the best interest of the City to authorize the City Manager to sign said Agreement with Playskool,

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL
OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:**

SECTION 1: That the City Manager is hereby authorized and directed to sign, and the City Clerk hereby authorized and directed to attest on behalf of the City of Evanston, the *Playskool "Win a Boundless™ Playground" Essay Contest Agreement*.

SECTION 2: That the City Manager is hereby authorized and directed to negotiate any additional conditions of the *Playskool "Win a Boundless™ Playground" Essay Contest Agreement* as may be determined to be in the best interests of the City.

SECTION 3: That this Resolution shall be in full force and effect from and after its passage and approval in the manner provided by law.



Lorraine H. Morton, Mayor

Attest:



Mary P. Morris, City Clerk

Adopted: March 26, 2007

EXHIBIT 1

PLAYSKOOL's WIN A BOUNDLESS™ PLAYGROUND ESSAY CONTEST PLAYGROUND AGREEMENT

Subject to being awarded the grand prize in the PLAYSKOOL Win a Boundless™ Playground Essay Contest, the City of Evanston (the "Site Owner"), hereby commits to the development of a Boundless™ Playground in conjunction with Hasbro, Inc., a Rhode Island corporation ("Hasbro"), Boundless Playgrounds, Inc., a Connecticut non-profit corporation ("Boundless Playgrounds") and the GameTime Division of PlayCore Wisconsin, Inc., a Wisconsin corporation ("GameTime").

WITNESSETH

WHEREAS, the Site Owner owns, operates, and maintains a public park at Lawson Park, Lighthouse Landing Complex (the "Park");

WHEREAS, the Site Owner intends to utilize a portion of the Park property for the construction, creation, operation, and maintenance of a universally-accessible, fully-integrated, sensory-rich playground;

WHEREAS, Boundless Playgrounds desires to act as a consultant on the play equipment configuration and layout of a Playground for the benefit of children of all abilities;

WHEREAS, Hasbro has provided funding to Boundless Playgrounds exclusively for Boundless Playgrounds' development of the Playground at the Park; and

WHEREAS, GameTime has agreed to provide and construct all playground equipment, surfacing and related materials for the Playground.

NOW, THEREFORE, in consideration of GameTime and Hasbro's award of a Boundless™ playground valued at \$300,000, and in consideration of the mutual covenants and promises contained herein, the adequacy, sufficiency, and receipt of which are hereby acknowledged, the parties hereby agree as follows:

1. Project Obligations.

- (a) Boundless Playgrounds. Boundless Playgrounds shall act as a consultant to ensure that the Playground is designed, engineered, and constructed by the Town and GameTime as a "Boundless Playground", in accordance with the Boundless Playgrounds proprietary criteria (the "Boundless Playgrounds Performance Criteria"), a copy of which will be provided to the Town and to GameTime to preserve its confidentiality.
- (b) GameTime. GameTime shall provide and install all playground equipment, surfacing and related materials at the Playground. The equipment and configuration will be as identified in Exhibit A, subject to any changes required to fit Playground equipment and apparatus onto the specific site.

- (c) Site Owner. The Site Owner shall be responsible for the oversight and management of the construction of the play environment. The Site Owner shall be responsible for providing any and all requisite site work preparation in connection with the construction of the Playground, including but not limited to grading, drainage (surface and subsurface), surveying and designing the layout of pathways and other structures or landscaping. The Site Owner shall also provide all site amenities deemed necessary for the Playground by Boundless Playgrounds and the Site Owner, including but not limited to, landscaping, shade structures, benches, drinking fountains and waste receptacles.
2. Design, Engineering, Construction and Equipment Standards. The Site Owner and GameTime shall design, engineer, and construct the Playground in accordance with the Boundless Playgrounds Performance Criteria and with all applicable U.S. Consumer Product Safety Commission (CPSC) guidelines, American Society for Testing and Materials (ASTM) standards, other applicable standards in the industry for universally accessible play areas, and all other applicable local, state, and federal laws and regulations. GameTime shall design, engineer and construct Playground equipment and play surfacing certified by International Play Equipment Manufacturer's Association (IPEMA) as complying with all applicable ASTM and other standards, including but not limited to ASTM F-1487-98 ("Standard Consumer Safety Performance Specifications for Playground Equipment for Public Use Standard") and ASTM F-1292-99 ("Impact Attenuation of Surface Systems Under and Around Playground Equipment Standard") and will also ensure that any and all Playground equipment and play surfacing comply with the aforementioned standards.
 3. Regulatory/Insurance Requirements. Prior to commencement of any services, GameTime shall provide to Boundless Playgrounds, Hasbro, and the Site Owner all applicable credentials, certifications and/or licenses as state or local law or regulation or code may require. The Site Owner and GameTime shall each provide Boundless Playgrounds and Hasbro with a certificate of insurance that complies with the requirements set forth on Exhibit B, attached hereto and made a part hereof. In addition, GameTime and the Site Owner shall name each of Hasbro and Boundless Playgrounds as an additional insured on their respective Commercial General Liability insurance policies. GameTime shall name the Site Owner as an additional insured on its Commercial General Liability insurance policy during GameTime's work on the project.
 4. Subcontractors. In the event that either GameTime or the Site Owner use subcontractors to perform any of their respective obligations under this Agreement, such party shall select reputable firms for any work subcontracted and shall ensure that each of its subcontractors carries insurance in accordance with the terms of Exhibit B at all times during the performance of services hereunder.
 5. Approval and Permission to Use Intellectual Property of Hasbro. The parties hereto expressly acknowledge and agree that Hasbro's prior written approval shall be required for use of the name, characters, symbols, designs, likeness, and visual representations of any Hasbro toy, game, or other product or property, or for the use of the copyrights and trademarks thereon, or for the use of any other intellectual property of Hasbro in connection with the Playground. Hasbro's approval and permission is expressly contingent upon the good faith negotiation

and execution of a mutually acceptable license or other agreement, which shall contain, among other provisions, quality control and intellectual property protection provisions which must be agreeable to Hasbro in its sole discretion.

6. Approval and Permission to Use Intellectual Property of Boundless Playgrounds. Boundless Playgrounds grants the Site Owner a limited, non-exclusive license to use the names "Boundless™" and "Boundless Playgrounds®" and the Boundless Playgrounds logo in association with the Project in accordance with Boundless Playgrounds' current usage standards which will be provided to the Site Owner from time to time. Boundless Playgrounds reserves the right to modify such usage standards at any time and without prior notice. Such license is granted solely for use in promoting, financing, constructing, using and maintaining the Project, provided that the Site Owner is in compliance with all its obligations under this Agreement.

Notwithstanding the foregoing, use of the names "Boundless™" and "Boundless Playgrounds®", the Boundless Playgrounds logo and/or the words "A Boundless Playground" on signage at, near or about the playground site requires specific written approval from Boundless Playgrounds. It is understood that such approval may be withheld if the completed installation or the maintenance of the playground does not meet *Boundless Playgrounds Performance Criteria*.

7. Timing. The Site Owner shall ensure that the Playground is constructed and operational by December 31, 2007. Each of Boundless Playgrounds, the Site Owner and GameTime shall exercise its best efforts in performing its obligations under this Agreement and acknowledges that time is of the essence for the performance of its obligations. A mutually acceptable timeline will be developed by all parties to this agreement.

8. Operation and Maintenance of Playground.

- (a) The parties understand and agree that the Playground and all equipment, surfacing and related materials placed thereon shall at all times remain the property of the Site Owner. All such equipment, surfacing and related materials shall be provided by GameTime with all of the express and implied warranties under applicable law (including without limitation the implied warranty of fitness for a particular purpose) and with the express warranties set forth on Exhibit C.
- (b) The parties agree that following completion of the Playground and prior to the opening of the Playground, the Site Owner shall ensure that: (1) an inspection of the Playground is conducted by Boundless Playgrounds to ensure that it meets the Boundless Playgrounds Performance Criteria; (2) an inspection of the Playground is conducted by a Certified Playground Safety Inspector (CPSI) certified by the National Recreation and Parks Association, (3) GameTime confirms in writing that the equipment has been properly installed in accordance with its standards and all applicable laws and regulations, and (4) any safety deficiencies identified are corrected by GameTime and certified in writing by GameTime as corrected. Prior to the opening of the Playground, the Site Owner shall review the Playground and the CPSI inspection report, inspect

corrected safety deficiencies, if any, and notify Boundless Playgrounds of the corrected safety deficiencies or any other material safety deficiencies in writing. The Site Owner shall operate, maintain, and repair the Playground (including but not limited to the grounds, the Playground surfacing, and the Playground equipment and apparatus in accordance with all applicable ASTM and CPSC standards, as well as the maintenance guidelines provided by GameTime and the safety surfacing provider(s). In the event any Playground equipment or apparatus requires repair, replacement, or other change, or any other material change, modification, or addition to the Playground is deemed advisable or necessary, they shall be made in accordance with these same standards

- (c) The Site Owner shall ensure that a CPSI shall inspect and certify the Playground annually and shall provide a copy of such certificate to Boundless Playgrounds. The Site Owner shall inspect the Playground on a no less than monthly basis and shall maintain in force property and casualty insurance coverage for the Playground in accordance with the terms of Exhibit B. Routine repairs or replacement of equipment shall be made by the Site Owner according to ASTM and CPSC standards, as applicable. The Site Owner agrees that, other than routine repairs, absent written consent from Boundless Playgrounds, which shall not be unreasonably withheld, it shall not, in any material manner, alter, replace, change or modify the Playground, including but not limited to the equipment and apparatus. In addition, the Site Owner agrees to operate and maintain the Playground in accordance with the Boundless Playgrounds' criteria for full integration and universal accessibility, the Americans with Disabilities Act ("ADA"), applicable state and local disability discrimination laws, applicable ASTM standards, and all other applicable federal, state, and local laws and regulations.

9. Obligations, Liability, and Indemnification.

- (a) Hasbro's Obligations to Provide Funding. The parties agree and acknowledge that Hasbro's sole obligation hereunder is to provide funding, which obligation the parties hereby acknowledge has been satisfied in full by Hasbro as of the date hereof. Furthermore, Hasbro assumes no other obligation or liability whatsoever under this Agreement or with respect to the design, engineering, construction, use, operation, repair, upkeep, or maintenance of the Park, the Playground, its equipment or apparatus, or any claims or disputes (including but not limited to personal injury claims) related hereto or thereto in any way.
- (b) Obligation of GameTime to Indemnify Site Owner During Construction Period. GameTime agrees to indemnify, defend, and hold harmless the Site Owner, its agents, and its employees from and against any and all liability, claims, judgments, costs, losses, expenses (including reasonable attorneys' fees), and demands arising directly out of their respective actions or inactions, or the actions or inactions of its employees, agents, or subcontractors, which actions or inactions occurred during the Playground's construction period.
- (c) Obligation of Site Owner to Indemnify Hasbro. The Site Owner agrees to indemnify, defend, and hold harmless Hasbro, its affiliates, subsidiaries, and their respective

officers, directors, stockholders, agents and employees, from and against any and all liability, claims, judgments, costs, losses, expenses (including attorneys' fees) and demands arising directly or indirectly out of its respective actions or inactions, or the actions or inactions of its agents or subcontractors, this Agreement, the Playground, or anything related in any way thereto. This indemnification clause shall survive the termination of this Agreement.

- (d) Obligation of Site Owner to Indemnify Boundless Playgrounds. As a condition of the Town's acceptance of the Playground for public use (as described in Section 7 hereof), the Town agrees to indemnify, defend, and hold harmless Boundless Playgrounds, its officers, directors, and employees, from and against any and all liability, claims, judgments, costs, losses, expenses (including attorneys' fees) and demands arising directly or indirectly out of its respective actions or inactions, or actions or inactions of its agents or subcontractors, in connection with this Agreement, the Playground, or anything related in any way thereto. This indemnification clause shall survive the termination of this Agreement.
 - (e) Obligation of GameTime to Indemnify Hasbro. GameTime agrees to indemnify, defend, and hold harmless Hasbro, its affiliates, subsidiaries, and their respective officers, directors, stockholders, agents and employees, from and against any and all liability, claims, judgments, costs, losses, expenses (including attorneys' fees) and demands arising directly or indirectly out of (i) its actions or inactions, or the actions or inactions of its agents or subcontractors in connection with this Agreement, the Playground or anything related in any way thereto, (ii) any actual or alleged defects in, or the installation of, the playground equipment or surfacing, or (iii) any actual or alleged infringement of any patents, proprietary designs, trademarks or copyrights of a third party. This indemnification clause shall survive the termination of this Agreement.
 - (f) Obligation of Boundless Playgrounds to Indemnify Hasbro. Boundless Playgrounds agrees to indemnify, defend, and hold harmless Hasbro, its affiliates, subsidiaries, and their respective officers, directors, stockholders, agents and employees, from and against any and all liability, claims, judgments, costs, losses, expenses (including attorneys' fees) and demands to the extent that such liability, claims, judgments, costs, losses, expenses or demands are based upon a claim caused by Boundless Playground's unlawful conduct or willful misconduct or a claim concerning the Boundless Playgrounds Criteria (for example, that the Criteria are defective, unlawful or exclusionary or that the Playground as constructed does not constitute a "Boundless Playground" pursuant to the Boundless Playgrounds Criteria). This indemnification clause shall survive the termination of this Agreement.
10. Audit. The parties mutually agree that all records and books retained by any party reasonably related to this Agreement shall be made available for inspection and/or audit to the requesting party at any time during normal business hours, under reasonable circumstances, and without business interruption. The requesting party shall be entitled to copy any information reasonably related to this Agreement from such records and books. The party requesting the

inspection and/or the audit shall provide written notice to the other party at least fifteen (15) days prior to the date of the audit or inspection.

11. Termination. Fifteen (15) years from the effective date hereof, this Agreement and the parties obligations hereunder shall terminate, and the Playground shall close and cease to operate; provided, however, at that time, the Site Owner may continue to operate a public playground at the site but the obligations of the parties hereunder shall terminate.

12. Miscellaneous. If any provision or item of this Agreement or the application thereof is held invalid, such invalidity shall not affect other provisions, items or applications of this Agreement which shall be given effect without the invalid provisions, items or applications and, to this end, the provisions of this Agreement are hereby declared severable. This Agreement shall be governed by the laws of the State of New York and the parties hereto consent to the jurisdiction of the courts located in the state of New York in the event of a dispute arising hereunder. This Agreement shall be binding upon, and inure to the benefit of, all of the parties and their respective successor and agencies, including any entity with which, or into which, Hasbro may be merged or which may succeed to its agents or business; provided, however, that the obligations of Boundless Playgrounds are personal and shall not be assigned without the other parties' prior written consent. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their respective officers thereunto duly authorized as of the day and year first written above.

WITNESS:

City of Evanston , State of Illinois

By: _____
Its: _____, duly authorized

WITNESS:

Hasbro, Inc.

By: _____
Its: _____, duly authorized

WITNESS:

Boundless Playgrounds, Inc.

By: _____
Its: _____, duly authorized

WITNESS:

PlayCore Wisconsin, Inc.

By: _____
Its: _____, duly authorized

Exhibit A Vendor Specific Layout for Playground

The picture attached is a rendering of one sample playground and is not necessarily reflective of the final winning playground. The final content and configuration of the winning playground will depend upon a variety of factors, including site factors.

NOTE: All pathways from the point(s) of origin to, around and through the playground shall be installed with a firm, stable, slip resistant material. There will be a continuous route of travel from the point(s) of origin connecting all three [3] of the play areas of the playground to each other and the point(s) of origin.

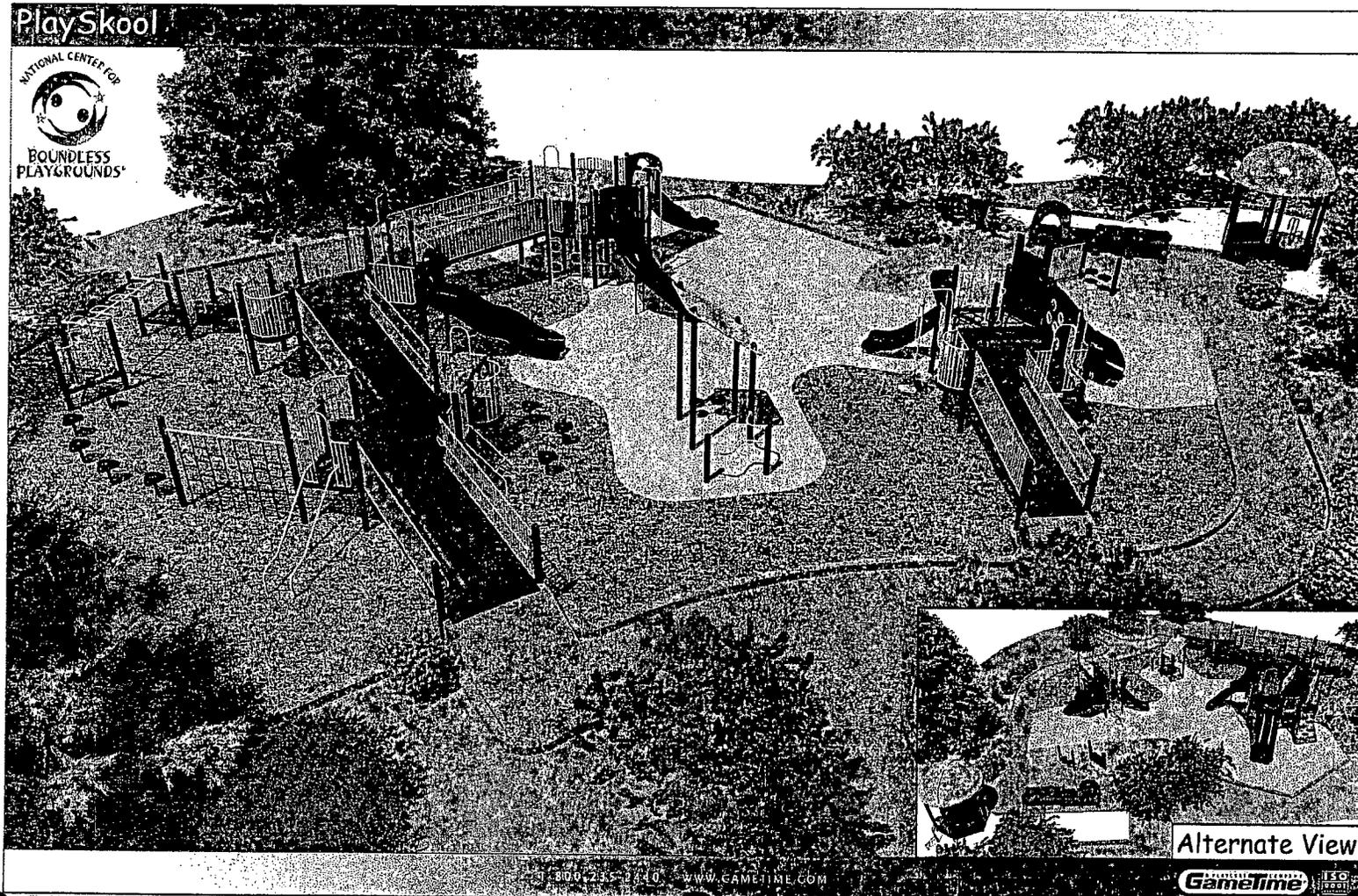


Exhibit B

Insurance Requirements

GameTime

Commercial General Liability, including endorsements for Products and Completed Operations and Contractual Liability, with a limit of not less than \$2,000,000.00 per occurrence;

Automobile Liability with a limit of not less than \$1,000,000.00 each accident;

Workers' Compensation insurance with statutory limits for the state or states in which the work is to be performed; and

Employers' Liability insurance with a minimum limit of \$500,000.00 per accident.

Town

Commercial General Liability, including endorsements for Products and Completed Operations and Contractual Liability, with a limit of not less than \$2,000,000.00 per occurrence;

Property insurance with minimum coverage of \$350,000 per occurrence.

Automobile Liability with a limit of not less than \$1,000,000.00 each accident;

Workers' Compensation insurance with statutory limits for the state or states in which the work is to be performed; and

Employers' Liability insurance with a minimum limit of \$500,000.00 per accident.

Exhibit C

Warranties

See attached

150 GameTime Drive
Fort Payne, Alabama 35967
Telephone: 256/845-5610
Facsimile: 256/997-9653
Email: service@gametime.com



GAMETIME WARRANTIES

GameTime provides warranties on all materials and workmanship for one year, excluding vandalism.

In addition, GameTime offers:

- ✓ Lifetime limited warranty on PowerScape® Plus and PrimeTime™ uprights.
- ✓ Lifetime limited warranty on all hardware.
- ✓ Lifetime limited warranty on GameTime PowerScape Plus PowerLocks™.
- ✓ Ten-Year limited warranty on PrimeTime and TotTime bolt-through connection.
- ✓ Fifteen-Year limited warranty on rotationally molded KidTime products.
- ✓ Fifteen-Year limited warranty on metal decks, pipes, rungs, rails and loops.
- ✓ Ten-Year limited warranty on pressure-treated pine and redwood products.
- ✓ Ten-Year limited warranty on Parcourse® fitness equipment.
- ✓ Fifteen -Year limited warranty on rotationally molded products.
- ✓ Five-Year limited warranty on SuperSeats™.
- ✓ Three-Year limited warranty on rubber or "C"-springs used on SaddleMates.
- ✓ One-Year limited warranty on all other GameTime products.

All warranties specifically exclude damage caused by vandalism; negligence, improper installation or improper use; changes in appearance resulting from weathering; scratches, dents or marring as a result of use.

Warranties are valid only if products are installed and maintained in accordance with GameTime instructions and use approved parts.

LIMITED WARRANTY ON POWERSCAPE® PLUS AND PRIMETIME™

GameTime provides a lifetime limited warranty on PowerScape Plus PowerLocks™; a fifteen -year warranty on decks, pipes, rails, loops, and rungs; a lifetime limited warranty on upright posts; a ten-year limited warranty on the PrimeTime bolt-through connection; and a one-year limited warranty on powder coated parts. These warranties cover damage due to failure or corrosion of metal parts that cause the product to become structurally unfit for its intended use. This lifetime warranty refers to the life of the product as defined below and covers the product under normal use and proper maintenance; see exclusions.

LIFETIME LIMITED WARRANTY ON HARDWARE

GameTime provides a one-year limited warranty on hardware against rust and lifetime limited warranty against structural failure due to breaking or shearing which causes the product to become structurally unfit for its intended use; see exclusions. All testing of GameTime's hardware is performed under the guidelines of ASTM B117. This lifetime warranty refers to the life of the product as defined below and covers the product under normal use and proper maintenance. The cost of replacement due to scratching or cutting of certain hardware plating is not included in this warranty.

LIMITED WARRANTY ON SITE FURNISHINGS

GameTime provides a ten-year limited warranty on site furnishings against structural failure that causes the product to be structurally unfit for its intended use; and a one-year limited warranty on powder coating. These warranties cover damage due to failure or corrosion of metal parts that cause the product to become structurally unfit for its intended use; see exclusions.

FIFTEEN-YEAR LIMITED WARRANTY ON METAL DECKS

GameTime provides a fifteen-year limited warranty on decks against structural failure that causes the product to be structurally unfit for its intended use; see exclusions.

FIFTEEN -YEAR LIMITED WARRANTY ON ROTOMOLDED AND THERMO-FORMED POLYETHYLENE PRODUCTS

GameTime provides a fifteen-year limited warranty on rotomolded and thermo-formed polyethylene products for structural integrity against damage due to breaking or splitting under normal use that causes the product to become structurally unfit for its intended use; see exclusions. In the event of a claim under this warranty, GameTime will replace the rotomolded or thermo-formed polyethylene product at no cost to the customer within the first thirty-six months from date of shipment.

If the product fails after thirty-six months, during the fourth year of this warranty, GameTime will replace the rotomolded or thermo-formed polyethylene product, charging the customer 30% of the selling price of the product current at time of replacement. Beginning in the fifth year, and every year thereafter through the remainder of the warranty, an additional 5% will be charged for each full year the product was in the hands of the customer. Should replacement be necessary after three years and before expiration of the original warranty, resulting in a pro-rated purchase, a new ten-year warranty shall be issued for the new part only.

TEN-YEAR LIMITED WARRANTY ON REDWOOD AND PRESSURE-TREATED WOOD PRODUCTS

GameTime provides a ten-year limited warranty on redwood and pressure-treated wood products against damage by decay or termites that cause the wood to become structurally unfit for its intended use; see exclusions.

FIVE YEAR LIMITED WARRANTY ON GAMETIME® SUPER SEAT™

GameTime provides a five-year limited warranty on Model No. 949 SuperSeat and Model No. 999 SuperSeat-2 against structural failure that causes the seat to become unfit for its intended use; see exclusions.. The factory installed "S"-Hook and Seat Hanger assemblies are covered under a one-year limited warranty against rust, corrosion or premature wear.

THREE-YEAR LIMITED WARRANTY ON RUBBER AND "C" SPRINGS FOR SADDLEMATES

GameTime provides a three-year limited warranty on rubber and "C"-springs for SaddleMates against damage due to de-lamination of the rubber spring and breakage of the "C"-spring that cause the SaddleMate to become structurally unfit for its intended use; see exclusions.

For the purposes of this warranty, lifetime encompasses no specific term of years, but rather that Seller warrants to its original customer for as long as the original customer owns the Product and uses the Product for its intended purpose that the Product and all parts will be free from defects in material and manufacturing workmanship.

Gametime excludes from these warranties the cost to remove parts and reinstall replacements; replacement due to cosmetic defects or coating deterioration caused by climatic conditions; and wood replacement resulting from twisting, warping, checking, shrinking, swelling or other natural physical properties of wood.

To the extent permitted by law, these warranties are expressly in lieu of any other implied or expressed warranties or representation by any person, including any implied warranty of merchantability or fitness. These warranties provide valuable rights to you. No Sales Representative can modify or amend the terms of this warranty.

Claim Procedure

To make a warranty claim, send your written statement of claim, along with the original purchase invoice or invoice number to:

GameTime
Customer Service
P.O. Box 680121
Fort Payne, AL 35968

Or Contact your local Representative at

USA 1-800-235-2440
International 01-256-845-5610

Within 60 days of notice of claim under warranty, GameTime will make arrangements to replace the damaged product. GameTime will cover freight costs within the continental United States. GameTime is not responsible for freight costs associated with products located outside the continental United States. GameTime reserves the right to inspect all product identified as damaged.

Since warranty limitations and exclusions may vary from state to state, you should check any specific warranty rights in your state.

GameTime
P.O. Box 680121
Fort Payne, Alabama 35968
Fax: 256-997-9653
Email: service@gametime.com

See GameTime on the web at www.gametime.com

